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Date: June 20, 2003 By: Kay L. Gaviglio

PATENT
Docket No. GC372

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE #17

In re Application of	)	
	)	
Timothy Fowler et al.,	)	Group Art Unit: 1636
	)	
Serial No.: 08/876,132	)	Examiner: Daniel M. Sullivan
	)	
Filed: June 23, 1997	)	
	)	
For: Improved *Enterobacteriaceae* Fermentation Strains	)	
	)	

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Non Fee Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's requirement mailed May 20, 2003, that a single species be elected, Applicants submit that an election is not required. Invention I describes a method for preparing an improved Enterobacteriaceae strain from a progenitor strain containing a cryptic plamid comprising the step of eliminating the cryptic plasmid from the strain. Invention II and III further describe the cryptic plasmid, which when deleted, alters the phenotypic growth characteristics or alters mobilization properties of other Enterobacteriaceae resident plasmids. Page 4, lines 3-21.

Inventions II and III are related to Invention I by the linking claim of Claim 6.

method of Invention I as a further identifying of the cryptic plasmid being eliminated from the improved strain.

Furthermore, Inventions II and III are related to each other as portions of the nucleic acid sequence of pS. Page 10, lines 1-11. Invention IV is the deduced amino acid sequence encoded by SEQ ID 3. Thus the deletion of the crytic plasmid that that has the deduced amino acid sequence encoded by Invention IV is useful within the method of the present invention. Contrary to the assertion of the Examiner, the nucleic acids of Inventions II and III; and the amino acids of Invention IV are not independent nor distinct and the requirement for restriction is respectively traversed.

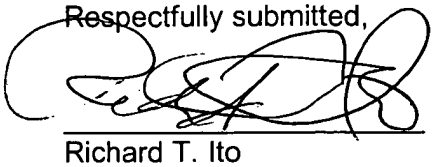
Furthermore, the nucleic acids and amino acid described in SEQ ID NOS:II, III, and IV number only three. To aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Patent Office, the Commissioner has decided sua sponte to partially waive the requirements of 37 CFR 1.141 et seq and permit reasonable number of such sequences to be claimed in a single application. It has been determined that normally ten sequences constitute a reasonable number for examination purposes. MPEP Section 803.4. Examination of Patent Applications Containing Nucleotide Sequences, 1192 O.G. 68 (November 19, 1996). Applicant submits that there is no serious burden on the Examiner which requires a restriction between Inventions I-IV.

However, in the event the requirement for restriction becomes final, in response to the Examiner's requirement that a single elected species be elected, Applicants hereby provisionally elect the invention in Group I, claims 1-17, drawn to a method for preparing an improved *Enterobacteriaceae* strain and an improved *Enterobacteriaceae* strain prepared according to the method, classified in class 435, subclass 252.1.

Applicants reserve the right to file subsequent applications claiming the non-

subject matter. Applicants have fully and completely responded to the Office Action and have made the required election. This application is now in order for early action.

Respectfully submitted,



Date: June 20, 2003

Richard T. Ito
Registration No. 32,242

Genencor International, Inc.
925 Page Mill Road
Palo Alto, CA 9430
Tel: 650-846-4020
Fax: 650-845-6504